



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

April 7, 1954

Hon. Claude Isbell  
Executive Secretary  
Board of Regents  
State Teachers Colleges  
Box K, Capitol Station  
Austin, Texas

Letter Opinion No. MS-127  
Re: Legality of Financing  
Agreement for Board of Re-  
gents of State Teachers  
Colleges

Dear Mr. Isbell:

Your letter of March 11, 1954, enclosed a "Financing Agreement" between Moroney, Beissner & Co., Houston, Emerson & Co., San Antonio, Garrett & Co., Inc., Dallas, and the Board of Regents of the State Teachers Colleges, dated February 23, 1954, and an "Outline of Financing Program for Sam Houston State Teachers College, Huntsville, Texas, Preliminary Draft No. 2, dated January 26, 1954." You desire our opinion as to the legality of the proposed financing as outlined in the aforementioned documents.

The financing agreement has two separate parts: (1) Refunding, and (2) "New Money" Bonds. For the purpose of this question, we will discuss them separately.

**REFUNDING**

The financing agreement proposes to refund three outstanding Dormitory Revenue bond issues:

- \$ 59,000 Dormitory Revenue Bonds, 4%, dated 9-1-34, due serially to 9-1-64. Non-callable. Secured by first lien on revenues of Belvin Hall (women).
- 137,000 Dormitory Revenue Bonds, Series 1940, 4%, dated 9-1-40, due serially to 9-1-72. Non-callable. Secured by first lien on revenues of Belvin Hall (women), plus second lien on revenues of Belvin Hall (women), and second lien on revenues of Jackson Hall (men).
- 301,000 Dormitory Revenue Bonds, Series 1 of 1945, 3½%, dated 12-1-45, due serially

Hon. Claude Isbell, page 2.

to 12-1-79. Callable at specified premiums. Secured by first lien on revenues of Buchanan Hall (women) plus third lien on revenues of Belvin Hall (women) and Elliott Hall (women).

\$ 497,000 The amount of underlying bonds to be refunded by a like amount of refunding bonds.

The 1934 and 1940 bonds are to be refunded as "Series 1-A of 1954" with the same maturities of the combined underlying bonds and with the same interest rate as the underlying bonds. The 1945 bonds are to be refunded as "Series 1-B of 1954" with the same interest rate as the underlying bonds but with shorter over-all maturities. This is calculated to save the Board money in interest cost.

The present owners and holders of the underlying bonds have consented to the refunding of same under this financial agreement.

Article 2603c, Sec. 3, V.A.C.S., reads, in part, as follows:

"Subject to the above restrictions, each of said Boards is given complete discretion in fixing the form, conditions and details of such bonds or notes. Any bonds or notes issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived from the operation of said buildings; provided that such bonds may be refinanced by the said Boards whenever such action is found by the Board to be necessary."

The provisions of the Financing Agreement are within the limitations of Article 2603c and are authorized by said law. The credit of the State is not pledged. The security for the refunding bonds and the "new money" bonds is a first lien on the net revenues of the three dormitories (women) and related dining hall.

#### "NEW MONEY" BONDS

The Financing Agreement proposes that the Board issue \$150,000 "new money" bonds for the purpose of making permanent improvements (air conditioning and other improvements) to the three dormitories (women) and related dining hall.

Hon. Claude Isbell, page 3.

The "new money" bonds will be issued as "Series 1-C of 1954," will bear 4½% interest, mature in 1975/77, and will be secured the same as the refunding bonds. Refunding the other bonds and consolidating them with these bonds is calculated to simplify the complex maze of liens now outstanding against the College's various dormitories and dining halls. This is further calculated to simplify the College's bookkeeping problem and simplify future financing.

Article 2603c, V.A.C.S., is quoted, in part, as follows:

"Section 1: The Board of Regents of the . . . State Teachers College . . . are hereby severally authorized and empowered to construct or acquire through funds or loans to be obtained from the Government of the United States, or . . . from any other source private or public, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed by each of said Boards, dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and such other buildings as may be needed for the good of the institution and the moral welfare and social conduct of the students of such institutions when the total cost, type of construction, capacity of such buildings, as well as the other plans and specifications have been approved by the respective Governing Boards; provided, however, that the Legislature shall never make an appropriation out of the general fund of this state, either in the regular appropriation bill or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing and installing any utility connections in any of the buildings erected under and by virtue of the provisions of this Act.

". . .

"Section 4. Each of said Boards is authorized and empowered to pledge all or a part of such revenues to the payment of such bonds or notes, and to enter such agreements regarding the imposition of sufficient charges and the collection, pledge and disposition of such revenues as it may deem proper. In all cases where existing buildings or structures are repaired or enlarged or to which additions are constructed, the board shall also have the power and are hereby authorized to pledge, incumber and/or

Hon. Claude Isbell, page 4.

dispose of the net revenues of such existing buildings or structures as well as to pledge, incumber and/or dispose of the revenue derived from the additions or improvements to such structures.

" . . .

"Each of said boards is hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of any other buildings such board may deem necessary. Each of said boards is authorized and empowered to pledge the rentals of dormitories, cottages, or other income bearing property for the repair, enlargement, or construction of any other buildings such board may deem necessary."

The statute shows clearly that the Board has the power and authority to issue revenue bonds for the purpose of making permanent improvements to its buildings. To hold otherwise would change the meaning of the statute. The terms "repaired or enlarged," "additions and improvements" and "enlargements" do not mean the same thing as to "construct" and "acquire" buildings. If the Legislature had intended that revenue bonds be issued only to construct and acquire buildings, it would have used only these terms; therefore, it is clear that additional power was intended by the use of these additional terms.

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." Sutherland Statutory Construction, 3rd Ed., Vol. 2, p. 339, Sec. 4705.

We concern ourselves with the terms "additions," "enlargements" and "improvements."

Attorney General's Opinion O-7078 held that bonds could be issued for the construction of an addition or additions to the courthouse authorized under a statute that provided for the erecting of a courthouse. Quoting from this opinion:

"To hold that a county whose courthouse, with proper repairs and additions, could be rendered commodious and useful in every respect, must pull it down and build an entirely new one, would be to charge our law-givers with an intent to encourage an unnecessary expenditure of the public money. Such a consideration would not, in itself, authorize us to infer a power when not expressly given or necessarily implied. Yet, when the language used is capable of including authority to do an act not mentioned in terms, such construction of it is greatly aided by considerations of public advantage which it would certainly produce". See Brown v. Graham, 58 Tex. 254; Saunders v. Looney, 225 S.W.280.

In Article 2603c, we do not have to search for the power which is included with an express power. The power to issue revenue bonds for the purpose of making additions, enlargements and improvements is expressly given. Certainly, it could never be said that the permanent improvements contemplated by the financing agreement could not have been made to the buildings when they were originally constructed and revenue bonds issued against them. Likewise, if there were no lien on the existing buildings, they could be torn down and new air-conditioned buildings could be built. Under Opinion O-7080, additions might even be made by reading into the express powers given, the power to make improvements. This is not necessary because the express power to make additions is given.

In line with the foregoing, the Attorney General approved bonds: Bexar County Home for the Aged (Poor Farm) Bonds, dated February 10, 1951 (A.G. #3505, Book #9), for the purpose of making alterations, additions and permanent improvements to the Bexar County Home for the Aged (Poor Farm) under a statute that authorized the issuance of bonds to establish county poor houses and farms.

The power to make improvements and enlargements is given in the same manner in Article 2603c as the power to make additions. The term "additions" is inclusive of "improvements" and "enlargements." Petition of Jagodzinske, Minn., 58 N.W.2d 61, 62. Websters Unabridged Dictionary defines the words as follows:

"Addition" - "A part added to a building, either being built so as to form one architectural whole with it, or by being joined with it in some way, as by a passage, and used so that one is a necessary adjunct or appurtenance of the other, or so that both constitute in use and purpose one and the same building."

"Enlargement" - "Increase in bulk or extent; augmentation; expansion; extension."

"Improvement" - "Betterment; amelioration; enhanced value or excellence."

Words and Phrases, Vol. 20, page 314, says: "'Improvement' is defined by lexicographers as 'that by which the value of anything is increased, its excellence enhanced, or the like,' or 'an amelioration of the condition of property affected by the expenditure of labor and money, for the purpose of rendering it useful for other purposes than those for which it was originally used, or more useful for the same purpose.'" *Stevens v. City of Port Huron*, 113 N.W. 291, 297; 149 Mich. 536, 12 Ann. Cas. 603."

The definitions of the words show that they have different meanings even though one may be more meaningful and encompass the other or others. The fact that the Legislature used each of these words separately shows their clear intention to authorize expenditures to be made for these purposes and the issuance of revenue bonds to pay for same.

It is our opinion that the improvements contemplated by Article 2603c are permanent type improvements.

\* \* \*

The Financing Agreement is in all respects legal; the Board has the power to enter into such an agreement; and the Board has the authority to issue the Refunding Bonds referred to above as "Series 1-A of 1954" and "Series 1-B of 1954" and to issue the "new money" bonds referred to above as "Series 1-C of 1954" for the purpose of making permanent improvements to the buildings indicated.

Before any of these bonds can be issued, a transcript of proceedings must be furnished the Attorney General of Texas, at which time the same will be examined, and the usual certificates and evidence of proof will be required.

The Attorney General is not passing upon the necessity, feasibility, or advisability of the financing agreement but is passing only upon the legality of same. This official opinion

Hon. Claude Isbell, page 7

is based upon the facts recited in the Financing Agreement and Outline of Financing, and reliance is made on them.

Very truly yours,

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Attorney General

By  
Robert W. Spence  
Assistant

RWS-s:wb